

CONSERVATION AGREEMENT BETWEEN THURSTON COUNTY AND NISQUALLY LAND TRUST

This Agreement is made and entered into in duplicate originals by and between THURSTON COUNTY (County), a municipal corporation with its principal offices at 2000 Lakeridge Drive S.W., Olympia, Washington 98502-6045, and NISQUALLY LAND TRUST (NLT), a nonprofit Washington corporation qualified to do business in Washington, having a mailing address of 1420 Marvin Rd. NE, Ste. C PMB 243, Lacey, WA 98516.

RECITALS

WHEREAS, Thurston County has a public interest in preserving and protecting in perpetuity the conservation values of this property legally described in Exhibit A and shown in the map in Exhibit B, attached hereto and by this reference incorporated herein (hereinafter known as “the Property”);

WHEREAS, NLT is a publicly supported, tax-exempt nonprofit organization, qualified under Sections 501(c)(3) and 170(h), respectively, of the Internal Revenue Code of 1986, as amended, and is a nonprofit nature conservancy corporation, qualified under RCW 64.04.130 and RCW 84.34.250, whose primary purpose is “conservation, preservation and enhancement of the water, wetlands, aquatic and wildlife habitat, timberlands, scenic areas, open spaces, recreational, and agricultural lands of and in proximity to the Nisqually River,” as contained in the Trust’s Article of Incorporation III(2);

WHEREAS, it is the purpose of this Agreement to ensure that the Property will be retained forever predominantly in its natural condition, and to prevent any use of the Property that will impair or interfere with the Conservation Values of the Property. Thurston County and NLT intend that this Agreement will restrict the use of the Property to such activities that are consistent with this purpose;

WHEREAS, the Property possess natural, scenic, open space, and potentially historic values (collectively “Conservation Values”) of great importance to the people of Thurston County and the people of the State of Washington. The Property consists of extensive Nisqually River shoreline, forested riparian areas, and wetlands that collectively provide valuable habitat for a variety of important species, including salmon;

WHEREAS, the Property’s shorelines, forested riparian areas, and wetlands support an array of fish and wildlife, including recognized important species. The Nisqually River provides important habitat to threatened Chinook salmon and steelhead, coho, cutthroat, and chum salmon.

WHEREAS, the Nisqually Land Trust has acquired funding from the Salmon Recovery Funding Board (SRFB), administered by the Washington Recreation and Conservation Office (RCO), to acquire the Property for permanent protection. In addition, matching funds are needed to contribute to the overall effort to protect the conservation values of the Property. A condition

of the RCO-SRFB grant is that the RCO receive a Deed of Right that requires that the Property be used for the conservation purposes identified in the grant;

WHEREAS, Thurston County tenders stewardship of, and management responsibilities for, the preservation and protection in perpetuity of the conservation values of the Property to NLT;

WHEREAS, NLT has the right and obligation to preserve and protect in perpetuity, and enhance and restore as needed, the conservation values of the Property;

WHEREAS, Thurston County holds conservation futures funds for, among other conservation projects, the purpose of purchasing land and preserving and protecting the conservation values thereof.

AGREEMENT

NOW, THEREFORE, the parties agree as follows:

1. Tender of Stewardship. Thurston County tenders stewardship and management responsibilities of the Property to NLT. NLT agrees to accept full responsibility in perpetuity to protect and preserve the conservation values of the Property in accordance with its purposes described in the recitals above. NLT agrees that it will not allow any activity on the Property that is contrary to the purpose of preserving, restoring and enhancing the conservation values of the Property.

2. Succession. If at any time it becomes impossible for NLT to ensure compliance with the covenants contained herein, or NLT shall cease to exist, then the rights and duties hereunder shall become vested and fall upon Thurston County. If such transfer becomes necessary, Thurston County agrees to ensure the Property's conservation values are maintained, in perpetuity, and that the Property is not used for purposes other than those consistent with this agreement. Upon prior written approval from Thurston County, NLT may choose another entity, with purposes similar to NLT, constituting a "qualified organization" within the meaning of the Internal Revenue Code (or corresponding provision of any future statute). If Thurston County determines that irreparable harm to the Conservation Values of the Property is occurring and NLT is not taking appropriate action, it shall have the right to seek an injunction or other appropriate relief against such harm in a Court of Competent Jurisdiction. If such vesting in the entities named above is deemed to be void under the Rule Against Perpetuities, the rights and obligations under this Agreement shall vest in such organization as a court of competent jurisdiction shall direct, pursuant to the applicable Washington law and the Code (or corresponding provision of any future statute) and with due regard to the purposes of this Agreement.

3. Consideration. In consideration of NLT's duties under this Agreement and its assumption of full responsibility for the preservation and protection of the Property's conservation values, Thurston County agrees to pay the sum of _____ Dollars (\$_____) to

NLT. If for any reason NLT is unable to accomplish the purchase of the Property, all funds provided by Thurston County under this Agreement must be immediately returned to the County.

4. Inspections. NLT agrees to allow Thurston County to inspect the Property and all records involving the Property upon the County providing reasonable notice.

5. Entire Agreement. The preamble to the Agreement is not a mere recital of facts, but consists of binding agreed-upon statements that form the basis of this Agreement.

The parties agree that this Agreement is the entire and complete expression of its terms and conditions. Any oral or written representations or understandings not incorporated in this Agreement are specifically excluded.

This Agreement shall take effect this _____ day of _____, 201__.

THURSTON COUNTY BOARD OF
COUNTY COMMISSIONERS

NISQUALLY LAND TRUST

_____, Chair

_____, Executive Director

_____, Vice-Chair

Date: _____

_____, Commissioner

Attest: _____

Clerk of the Board

EXHIBIT A: Legal Description of the Property

SAMPLE

EXHIBIT B: Map of the Property

SAMPLE